Is not the limitation only to ordinary expenses? Field.

Does not the power to borrow for general indebtedness include indebtedness of this?

Dec. 21. 1880

109-229

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 439.

THE COUNTY COURT OF KNOX COUNTY AND THE JUSTICES THEREOF, PLAINTIFFS IN ERROR,

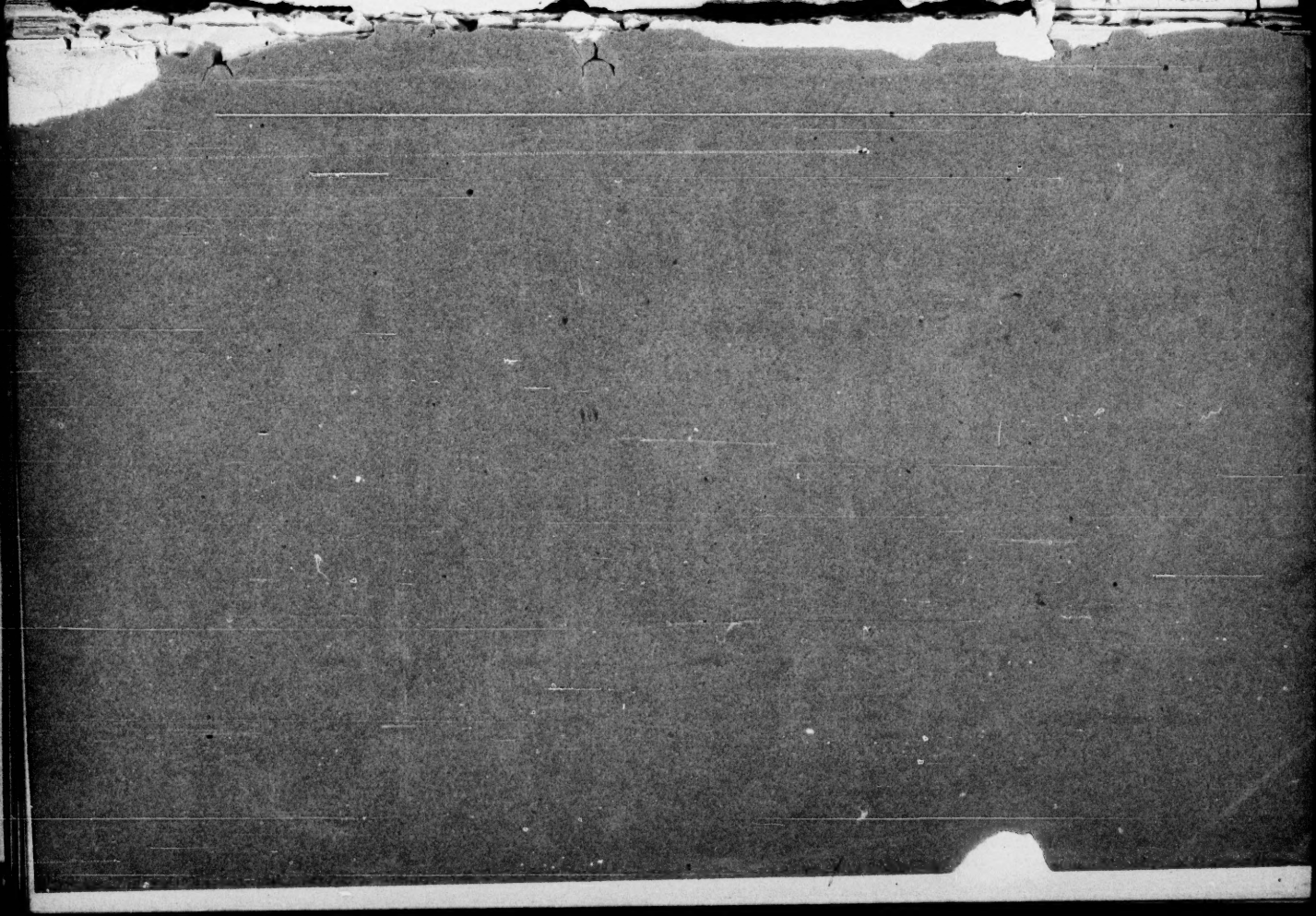
vs.

THE UNITED STATES EX REL. GEORGE W. HARSHMAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED JULY 3, 1878.

Post Decision until 304 is argued



SUPREME COURT OF THE UNITED STATES.

No. 439.

THE COUNTY COURT OF KNOX COUNTY AND THE JUSTICES THEREOF, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX REL. GEORGE W. HARSHMAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the March term, 1878, thereof, between the United States, on the relation of George W. Harshman, relator, and the County Court of Knox County and the Justices thereof, respondents, a manifest error hath happened, to the great damage of the said respondents, as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourth day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

Issued at office in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri,
By T. L. CRAWFORD,
Deputy.

Allowed by—

JOHN F. DILLON, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof I hereto subscribe my name, and affix the seal of said circuit court, at office in the city of St. Louis, this 9th day of April, A. D. 1878.

[SEAL.] M. M. PRICE,
Clerk of said Court,
By T. L. CRAWFORD,
Deputy.

(Indorsed:) No. 838 & 1088. United States circuit court, eastern district of Missouri. U. S., ex rel. Geo. W. Harshman, vs. County Court Knox Co., &c. Writ of error to the circuit court of the United States, eastern district of Missouri. Returned and filed day of , 187 .
, clerk.

3 UNITED STATES OF AMERICA:

To George W. Harshman, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein the County Court of Knox County and the Justices thereof are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John F. Dillon, judge of the circuit court of the United States for the eastern district of Missouri, this day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

JOHN F. DILLON,
Judge United States Circuit Court, Eastern District of Missouri.

4 I hereby accept service of the within citation at the eastern district of Missouri this 6th day of April, A. D. 1878.

GEO. W. HARSHMAN,
By his attorney T. K. SKINKER.

(Indorsed:) United States circuit court, eastern district of Missouri. U. S., ex rel. Geo. W. Harshman, vs. County Court Knox Co., &c. Citation. Filed Apr. 6, 1878. M. M. Price, clerk.

5 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

In the circuit court of the United States in and for said district.

Be it remembered that on the 8th day of February, A. D. 1878, at an adjourned session of the September, term 1877, of the circuit court of the United States for the eastern district of Missouri, there was filed the following information for a writ of alternative mandamus, to wit:

Information.

EASTERN DISTRICT OF MISSOURI, *sct:*

To the honorable judges of the circuit court of the United States in and for the eastern district of Missouri:

George W. Harshman comes and informs the court that he is a citizen of the State of Ohio; that Knox County is a county of the State of Missouri, whose financial affairs are managed by a county court consisting of justices, who are also citizens of said State; that on the 31st day of March, 1877, he recovered in this court a judgment against said county for the sum of ($3,258.15) thirty-two hundred and fifty-eight & $\frac{15}{100}$ dollars and costs; that on the 18th day of October, 1877, he recovered in this court another judgment against said county for the sum of ($6,764.44) sixty-seven hundred and sixty-four & $\frac{44}{100}$ dollars and costs; that both of said judgments bear interest from the day of rendition at six per cent. per annum, and are founded on coupons for the interest on

bonds issued by said county to the Missouri and Mississippi Railroad Company; that the bonds from which said coupons are taken are part of a large number of bonds so issued by said county to aid in the construction of the railroad of said company; that by the 13th
6 section of the charter of said company, being an act entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20th, 1865, the county court of said county is authorized to levy a tax to pay the said bonds, not exceeding one-twentieth of one per cent. upon the assessed value of taxable property in said county in each year; that by the general law of the State, the said county court is authorized to levy annually for county purposes a tax of one-half of one per cent. upon the assessed value of the taxable property in said county; that the annual interest on the bonds issued in aid of said road amounts to about $15,000, and the proceeds of the annual tax authorized by said charter amounts to not more than $1,700 and is wholly inadequate to pay the said interest, and that a very large amount of said interest is now in arrears besides the said judgments, to wit, the sum of $50,000; that there is in the treasury of said county a fund of not more than $600 derived from the levy of said tax of one-twentieth of one per cent., and that warrants have already been drawn by order of said court upon said fund and have been presented for payment to the treasurer of said county to the amount of $2,300, but have not been paid because there is no money in said fund except as aforesaid; that said tax of one-twentieth of one per cent. has been levied for the year 1877, and for every year prior thereto since the issue of said bonds, and that the said tax for the current year, if collected in full, will not pay more than the warrants already drawn and presented to the treasurer; that said county has no property which can be subjected by execution to the satisfaction of said judgments; that it
7 is by law the duty of said county court to audit and settle all accounts to which the said county is a party, and to order the payment out of the county treasury of any sum of money due by the said county by a warrant to be issued by the clerk of said court; that a demand has been made on said court for warrants to be issued to your petitioner for the respective amounts of said judgments, with interest and costs on each, payable out of the ordinary revenues of the county, but the said court have refused to issue such warrants, and that your petitioner is without other legal remedy.

Wherefore he prays that a writ may issue out of this court, commanding the said county court to cause warrants for the respective amounts of said judgments, with interest and costs on each as aforesaid, to be issued to your petitioner, payable out of the ordinary revenues of said county.

GEORGE W. HARSHMAN,
By his attorney T. K. SKINKER.

Thomas K. Skinker, being duly sworn, upon his oath says that he is the attorney for the relator in the foregoing information, and that he is informed and verily believes the statements therein made to be true.

T. K. SKINKER.

Subscribed and sworn to before me this sixth day of February, A. D. 1878.

M. M. PRICE, *Clerk*,
By A. P. SELBY,
Deputy.

And on the day aforesaid, to wit, the 8th day of February, 1878, the following further proceedings were had in said cause, to wit:

Order for writ of alternative mandamus.

UNITED STATES EX REL. GEORGE W. HARSHman, relator,
vs.
8 COUNTY COURT OF KNOX COUNTY AND the Justices thereof, respondents.

This day comes George W. Harshman by his attorney T. K. Skinker, esquire, and presents to the court here his application for a writ of alternative mandamus to be directed to the county court of Knox County and the justices thereof, and thereupon suggests to the court that said relater is a citizen of the State of Ohio; that Knox County is a county of the State of Missouri, whose financial affairs are managed by a county court consisting of justices, who are also citizens of said State; that on the 31st day of March, 1877, he recovered in this court a judgment against said county for the sum of thirty-two hundred and fifty-eight $\frac{15}{100}$ dollars and costs; that on the 18th day of October, 1877, he recovered in this court another judgment against said county for the sum of sixty-seven hundred and sixty-four $\frac{44}{100}$ dollars and costs; that both of said judgments bear interest from the day of rendition at six per cent. per annum, and are founded on coupons for the interest on bonds issued by said county to the Missouri and Mississippi Railway Company; that the bonds from which said coupons are taken are part of a large number of bonds so issued by said county to aid in the construction of the railroad of said company; that by the 13th section of the charter of said company, being an act entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20th, 1865, the county court of said county is authorized to levy a tax to pay said bonds not exceeding one-twentieth of one per cent. upon the assessed value of taxable property in said county in each year; that by the gen-
9 eral law of the State, the said county court is authorized to levy annually for county purposes, a tax of one-half of one per cent. upon the assessed value of the taxable property in said county; that the annual interest on the bonds issued in aid of said railroad amounts to about fifteen thousand dollars, and the proceeds of the annual tax authorized by said charter amounts to not more than $1,700, and is wholly inadequate to pay the said interest, and that a very large amount of said interest is now in arrears besides the said judgments, to wit, the sum of fifty thousand dollars; that there is in the treasury of said county a fund of not more than six hundred dollars derived from the levy of said tax of one-twentieth of one per cent., and that warrants have already been drawn by order of said court upon said funds and have been presented for payment to the treasurer of said county to the amount of twenty-three hundred dollars, but have not been paid because there is no money in said fund except as aforesaid; that said tax of one-twentieth of one per cent. has been levied for the year 1877 and for every year prior thereto, since the issue of said bonds; that the said tax for the current year if collected in full will not pay more than the warrants already drawn and presented to the treasurer; that said county has no property which can be subjected by execution to the satisfaction of said judgments; that it is by law the duty of said county court to audit, adjust, and settle all accounts to which the said county is a party

and to order the payment out of the county treasury of any sum of money due by the said county, by a warrant to be issued by the clerk of said court; that a demand has been made on said court for a warrant to be issued to the relator for the respective amounts of said judgments with interest and costs on each, payble out of the ordinary revenues of the county; that said court has refused to issue such warrants, and that relator is without other legal remedy; all of which beeing seen and heard and by the court fully understood, it is ordered that a writ of alternative mandamus be issued directed to the county court of Knox County and the justices thereof, commanding them forthwith to cause warrants to be drawn in favor of said relator for the respective amounts of said judgments, interest and costs, and payable out of the ordinary revenues of the county, or that they, and each of them, show cause before this court on the first day of the next term thereof to be holden at the city of St. Louis, on the third Monday of March, 1878, why they refuse so to do.

Which said writ of alternative mandamus is in the words and figures following, to wit:

Writ of alternative mandamus.

UNITED STATES OF AMERICA,
Eastern District of Missouri, set:

The President of the United States of America to the county court of Knox County and the justices thereof, greeting:

Whereas it has been suggested to our circuit court of the United States for the eastern district of Missouri, that George W. Harshman, the relator, is a citizen of the State of Ohio; that Knox County is a county of the State of Missouri, whose financial affairs are managed by the county court, consisting of justices, who are also citizens of said State; that on the 31st day of March, 1877, he recovered in this court a judgment against said county for the sum of thirty-two hundred and fifty-eight $\frac{15}{100}$ dollars and costs; that on the 18th day of October, 1877, he recovered in this court another judgment against said county for the sum of sixty-seven hundred and sixty-four $\frac{44}{100}$ dollars and costs; that both of said judgments bear interest from the day of the rendition at six per cent. per annum, and are founded on coupons for the interest on bonds issued by said county to the Missouri and Mississippi Railroad Company; that the bonds from which said coupons are taken are part of a large number of bonds so issued by said county to aid in the construction of the railroad of said company; that by the 13th section of the charter of said company, being entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20th, 1865, the county court of said county is authorized to levy a tax to pay said bonds not exceeding one twentieth of one per cent. upon the assessed value of taxable property in said county in each year; that by the general law of the State the said county court is authorized to levy annually for county purposes a tax of one-half of one per cent. upon the assessed value of the taxable property in said county; that the annual interest on the bonds issued in aid of said railroad amounts to about fifteen thousand dollars, and the proceeds of the annual tax authorized by said charter amounts to not more than seventeen hundred dollars, and is wholly inadequate to pay the said interest, and that a very large amount of said interest is now in arrears, besides the said judgments, to wit,

the sum of fifty thousand dollars; that there is in the treasury of said county a fund of not more than six hundred dollars, derived from the levy of said tax of one-twentieth of one per cent., and that warrants have already been drawn upon said fund, and have been presented for payment to the treasurer of said county to the amount of twenty-
12 three hundred dollars, but have not been paid, because there was no money in said fund except as aforesaid; that said tax of one-twentieth of one per cent. has been levied for the year 1877, and for every year prior thereto since the issue of said bonds; that the said tax for the current year, if collected in full, will not pay more than the warrants already drawn and presented to the treasurer; that the said county has no property which can be subjected by execution to the satisfaction of said judgments; that it is by law the duty of said county court to audit, adjust, and settle all accounts to which the said county is a party, and to order the payment out of the county treasury of any sum of money due by the said county by a warrant to be issued by the clerk of said court; that a demand has been made on said court for warrants to be issued to the relator for the respective amounts of said judgments, with interest and costs on each, payable out of the ordinary revenues of the county; that said court has refused to issue such warrants, and that relator is without other legal remedy:

Now we, being willing that due and speedy justice be done in the premises, do command you, the County Court of Knox County, and the justices thereof, that you forthwith cause warrants to be drawn in favor of said relator for the respective amounts of said judgments, interest, and costs, payable out of the ordinary revenues of the county, or that you show cause before this court on the first day of the next term thereof, to be holden at the city of St. Louis, on the third Monday of March, 1878, why you refuse so to do.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 13th day of February, A. D. 1878.

13 Issued at office in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] M. M. PRICE, *Clerk*,
By T. L. CRAWFORD, *Deputy*.

And upon which writ the marshal for said district made the following return, to wit:

Marshal's return to writ.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I return this writ executed by delivering one original writ of alternative mandamus to Thomas H. Merriweather on the 19th day of February, 1878, and by delivering one original writ of alternative mandamus to Casper Fetters on the 23d day of February, 1878, and by delivering one original writ of alternative mandamus to William B. Rule on the 25th day of February, 1878, in the county of Knox, eastern district of Missouri. The aforesaid Thomas H. Merriweather, Casper Fetters, and William B. Rule being the justices composing the county court of Knox Co., Mo.

H. W. LEFFINGWELL,
U. S. Marshal,
By BENJAMIN BOWEN,
Deputy.

And afterwards, to wit, on March 18th, 1878, the following further proceedings were had in said cause, to wit:

UNITED STATES EX REL. GEORGE W. HARSHman, relator, *vs.* THE COUNTY COURT OF KNOX COUNTY AND the Justices thereof, respondents.	838 & 1088.

Now come the respondents, by W. R. McQuoid, their attorney, and file return to the alternative mandamus heretofore issued herein; whereupon the relator, by his attorney, files motion to quash said return.

Which said return is in the words and figures following, to wit:

Return to alternative mandamus filed. Motion to quash said return filed.

14 In the circuit court of the United States for the eastern district of Missouri.

THE UNITED STATES OF AMERICA, AT THE RElation of George W. Harshman, *against* CASPER FETTERS, SEN., WILLIAM B. RULE, and Thomas Merriweather, judges of the county court of Knox County, Missouri.	

Return to alternative writ of mandamus.

And now comes Casper Fetters, sen., William B. Rule, and Thomas Merriweather, judges of the county court of Knox County, Missouri, and for return to the alternative writ of mandamus heretofore issued in this cause say that said relator ought not to have his said writ of peremptory mandamus, because they say that the bonds of said relator from which the coupons on which he obtained judgments was by said relator detached are of the issue of one hundred and eighty-five thousand dollars in bonds heretofore issued by said Knox County to the Missouri and Mississippi Railroad Company. That said bonds were issued by virtue of the power vested in said county of Knox by the act entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved by the general assembly of the State of Missouri February 20th, 1865, and the only power which authorized their issue was contained in the thirteenth section of said act, which expressly restricts the county court of said county of Knox from levying a tax exceeding one-twentieth of one per cent. for each year to pay said bonds, or the interest thereon, and that each and every bond so issued recited on the face thereof the fact that they were issued by virtue of the authority vested in the county court of said county by the charter of said
15 company, being entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20th, 1865, which recital gave notice to the relator of the restriction contained in the thirteenth section of said act.

These respondents say that said bonds or any of said coupons did not expressly state that they were issued for value received, and therefore under the laws of the State of Missouri they were not negotiable.

These respondents further say that it is true generally that it is the duty of the county court to audit and settle the accounts against the

said county and cause a warrant to be issued in payment thereof drawn on the general revenue fund, but further say that they would not be authorized by law to issue a warrant on the general revenue fund in payment of any of said bonds.

These respondents further say that there is no authority under the laws of the State of Missouri for the county court of said county to provide any revenue fund for the payment of said bonds or interest or any payment thereon except the one-twentieth of one per cent. authorized to be levied each year by the said charter.

These respondents further say that as the county court of Knox County they have levied all the tax they are authorized to levy by the sections aforesaid of the charter of said railroad company.

These respondents further say that the relator is not entitled to have his judgments paid out of any other revenue fund than that to be derived by levy and collection of tax pursuant to said charter, and of the fund so collected under the power contained in said charter from year to year the same is to be distributed proportionately among the holders of said bonds of said issue of one hundred and eighty-five thousand dollars.

16 These respondents further say that the county court of said Knox County has no power to issue warrants to relator for his judgments payable out of the ordinary revenues of said county.

And the respondents further say that there is no fund in the treasury applicable to said bonds except such as will more than be consumed by the warrants already registered.

These respondents further say that they are not authorized to order warrants for said judgments payable out of any other fund than that derived from the tax of one-twentieth of one per cent. as provided by said charter, and such warrants, if at all authorized, could only be for said relator's proportion of each year's levy of the said one twentieth of one per cent. authorized by said charter. Wherefore these respondents ask to be discharged with cost.

CASPER FETTERS, SEN.,
WILLIAM R. RULE,
THOMAS MERRIWEATHER,
By W. R. McQUOID,
Their Attorney.

STATE OF MISSOURI,
County of Knox, ss:

We, Casper Fetters, sen., William B. Rule, and Thomas Merriweather, respondents above named, on our oaths say the foregoing return is true as we verily believe.

CASPER FETTERS, SEN.
W. B. RULE.
THOS. H. MERRIWEATHER.

Subscribed and sworn to before me this 13th day of March, A. D. 1878.

[SEAL.]

SAM'L ENNIS,
Clerk County Court.

17 Said motion to quash return to alternative writ is in the words and figures following, to wit:

Motion to quash return to alternative writ.

THE UNITED STATES EX REL. GEORGE W. Harshman
vs.
THE KNOX COUNTY COURT.

The relator comes and moves the court to quash the respondents' return herein, and for grounds assigns:

1st. That said return shows no legal cause why the relator should not have his peremptory writ as prayed.

2nd. That the provision made by the 13th section of the charter of the Missouri and Mississippi Railroad Company for the payment of bonds issued by said county in aid of said company is not the sole or exclusive provision made for that purpose by the laws of the State of Missouri.

3rd. That when the funds derived from the levy of the tax authorized by said 13th section are exhausted the holder of bonds is entitled to be paid out of the general revenues of the county.

4th. That the relator is not limited for the payment of his bonds and the judgment thereon to a pro rata share of the funds derived from the levy of said $\frac{1}{2}{}_{0}$ of one per cent. tax.

5th. That it is immaterial whether the bonds on which were obtained the judgments set out in the alternative writ were negotiable or not.

T. K. SKINKER,
Attorney for Relator.

And afterwards, to wit, on March 21st, 1878, the following further proceedings were had in said cause, to wit:

Motion to quash return to alternative writ sustained.—Peremptory writ ordered.

UNITED STATES EX REL. GEORGE W. HARSHman, relator,
vs. 838 & 1083.
THE COUNTY COURT OF KNOX COUNTY AND the Justices thereof, respondents.

18 Now comes the relator by T. K. Skinker, esquire, his attorney, and the respondents by W. R. McQuoid, esquire, their attorney, and the motion of the relator to quash the return of the respondents to the alternative writ of mandamus herein being submitted, and the court being fully advised in the premises, it is ordered that said motion be and the same is hereby sustained, and that the return of said respondents is insufficient.

It is therefore now ordered that a peremptory writ of mandamus be issued against the said respondents, The County Court of Knox County and the Justices thereof, commanding them and each of them that they forthwith cause warrants to be drawn in favor of the said relator for the respective amounts of the judgments, interest, and costs, as set forth in the alternative writ herein on the treasurer of Knox County, and payable out of the ordinary revenues of the county for county purposes.

And afterwards, to wit, on March 23rd, 1878, the following further proceedings were had in said cause, to wit:

UNITED STATES EX REL, GEORGE W. HARSHman, relator, *vs.* COUNTY COURT OF KNOX COUNTY AND THE Justices thereof, respondents.	838 & 1088.

Now come the parties by their respective attorneys, and the court having considered the motion filed by respondents for a new trial and being fully advised thereof, orders that said motion be and the same is hereby overruled, and thereupon said respondents by Messrs. Wagner, Dyer, and Emmons, their attorneys, present their bill of exceptions, which is by the court allowed, signed, and ordered to be filed as a part of the record herein.

Which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States in and for the eastern district of Missouri.

19 UNITED STATES EX REL. GEORGE W. HARSHman, plaintiff, *vs.* THE KNOX COUNTY COURT, DEFENDANT.	

Be it remembered that at the March term, 1878, of the United States circuit court in and for the eastern district of Missouri, this cause came on to be heard on the alternative writ of mandamus and the return filed thereto by the defendant. The plaintiff filed his motion to quash said return, which motion is in words and figures as follows. (Motion appears on page 17.)

Which motion was on the 21st day of March, 1878, by the court sustained and final judgment given thereon for the plaintiff, ordering a peremptory writ to issue; to which action and ruling of the court the defendant at the time excepted.

And afterwards, to wit, on the 22nd day of said March, and during said term, the defendant filed its motion to set aside said judgment and grant it a new trial, which said motion is in words and figures as follows:

Motion for a new trial.

In the circuit court of the United States in and for the eastern district of Missouri.

THE UNITED STATES EX REL. GEORGE W. Harshman *vs.* THE KNOX COUNTY COURT.	

The defendant appears and moves the court to set aside the judgment

in this cause and grant a new trial. Because the court erred in sustaining the motion to quash the defendant's return. Because the judgment of the court was for the plaintiff when it should have been for the defendant.

DAVID WAGNER WITH
W. R. McQUOID,
For Def't.

20 Which said motion was by the court overruled, to which ruling and order of the court the defendant then and there excepted at the time.

Defendant therefore prays the court to allow and sign this bill of exceptions, and that the same may be signed and sealed and made part of the record, which is done this 23d day of March A. D. 1878.

JOHN F. DILLON,
Judge.

And afterwards, to wit, on April 6th, 1878, the following further proceedings were had in said cause, to wit:

Writ of error & citation presented, allowed, & signed.—Bond filed & approved.—Supersedeas awarded.

UNITED STATES EX REL. GEORGE W. HARSHman, relator, *vs.* COUNTY COURT OF KNOX COUNTY AND THE Justices thereof, respondents.	838 & 1088.

Now come the respondents, by their attorneys, and present to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said relator to be and appear at a Supreme Court of the United States, at the next term thereof, on the second Monday of October next, which said writ of error is allowed, and said citation signed by the judge; and the said respondents also present to the court their bond in the penal sum of twenty thousand dollars, which said bond is approved; and on motion of respondents it is ordered that a supersedeas be awarded staying further proceedings on the judgment herein.

Which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, the County of Knox, in the State of Missouri, and D. A. Ronner, C. M. Campbell, and Henry McGonigle, are held and firmly bound unto George W. Harshman in the full and just sum of twenty thousand dollars, to be paid
21 to the said George W. Harshman, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this third day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately at the March term, 1878, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between George W. Harshman, plaintiff, and

And afterwards, to wit, on March 23rd, 1878, the following further proceedings were had in said cause, to wit:

UNITED STATES EX REL, GEORGE W. HARSHman, relator, *vs.* COUNTY COURT OF KNOX COUNTY AND THE Justices thereof, respondents.	838 & 1088.

Now come the parties by their respective attorneys, and the court having considered the motion filed by respondents for a new trial and being fully advised thereof, orders that said motion be and the same is hereby overruled, and thereupon said respondents by Messrs. Wagner, Dyer, and Emmons, their attorneys, present their bill of exceptions, which is by the court allowed, signed, and ordered to be filed as a part of the record herein.

Which said bill of exceptions is in the words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States in and for the eastern district of Missouri.

19 UNITED STATES EX REL. GEORGE W. HARSHman, plaintiff, *vs.* THE KNOX COUNTY COURT, DEFENDANT.

Be it remembered that at the March term, 1878, of the United States circuit court in and for the eastern district of Missouri, this cause came on to be heard on the alternative writ of mandamus and the return filed thereto by the defendant. The plaintiff filed his motion to quash said return, which motion is in words and figures as follows. (Motion appears on page 17.)

Which motion was on the 21st day of March, 1878, by the court sustained and final judgment given thereon for the plaintiff, ordering a peremptory writ to issue; to which action and ruling of the court the defendant at the time excepted.

And afterwards, to wit, on the 22nd day of said March, and during said term, the defendant filed its motion to set aside said judgment and grant it a new trial, which said motion is in words and figures as follows:

Motion for a new trial.

In the circuit court of the United States in and for the eastern district of Missouri.

THE UNITED STATES EX REL. GEORGE W. Harshman *vs.* THE KNOX COUNTY COURT.

The defendant appears and moves the court to set aside the judgment

in this cause and grant a new trial. Because the court erred in sustaining the motion to quash the defendant's return. Because the judgment of the court was for the plaintiff when it should have been for the defendant.

DAVID WAGNER WITH
W. R. McQUOID,
For Def't.

20 Which said motion was by the court overruled, to which ruling and order of the court the defendant then and there excepted at the time.

Defendant therefore prays the court to allow and sign this bill of exceptions, and that the same may be signed and sealed and made part of the record, which is done this 23d day of March A. D. 1878.

JOHN F. DILLON,
Judge.

And afterwards, to wit, on April 6th, 1878, the following further proceedings were had in said cause, to wit:

Writ of error & citation presented, allowed, & signed.—Bond filed & approved.—Supersedeas awarded.

UNITED STATES EX REL. GEORGE W. HARSHman, relator, *vs.* COUNTY COURT OF KNOX COUNTY AND THE Justices thereof, respondents.	838 & 1088.

Now come the respondents, by their attorneys, and present to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said relator to be and appear at a Supreme Court of the United States, at the next term thereof, on the second Monday of October next, which said writ of error is allowed, and said citation signed by the judge; and the said respondents also present to the court their bond in the penal sum of twenty thousand dollars, which said bond is approved; and on motion of respondents it is ordered that a supersedeas be awarded staying further proceedings on the judgment herein.

Which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, the County of Knox, in the State of Missouri, and D. A. Ronner, C. M. Campbell, and Henry McGonigle, are held and firmly bound unto George W. Harshman in the full and just sum of twenty thousand dollars, to be paid
21 to the said George W. Harshman, his heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this third day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately at the March term, 1878, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between George W. Harshman, plaintiff, and

Knox County, in the State of Missouri, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said plaintiff citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said defendant shall prosecute said writ to effect, and answer all damages and costs, if any, it it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of—

KNOX COUNTY, MISSOURI,
By CASPER FETTERS, SEN., [SEAL.]
THOS. H. MERIWETHER, [SEAL.]
W. B. RULE, [SEAL.]
Judges of the Knox County Court.
SAM'L ENNIS, [SEAL.]
Clerk County Court.
D. A. RONNER. [SEAL.]
HENRY McGONIGLE. [SEAL.]
C. M. CAMPBELL. [SEAL.]

Approved and to operate as a supersedeas.

JOHN F. DILLON, *Judge.*

22, 23 STATE OF MISSOURI,
County of Knox, ss:

I, Samuel Ennis, clerk of the county court within and for the county and State aforesaid, certify that the above-named D. A. Ronner, Henry McGonigle, and C. M. Campbell are resident citizens of said county, and that I am personally acquainted with said persons; that they each signed their respective names to said bond in my presence; that said D. A. Ronner is worth over and above his indebtedness and homestead exemption the sum of ten thousand dollars; that said Henry McGonigle is worth over and above his indebtedness and homestead exemption the sum of twenty thousand dollars; that said C. M. Campbell is worth over and above his indebtedness and homestead exemption the sum of fifty thousand dollars; and I further certify that the above-named Casper Fetters, sr., William B. Rule, and Thomas H. Meriwether are the present judges of said county court, and that they signed the above bond in my presence.

In witness whereof I have hereto set my hand and the seal of my office this 3rd day of April, A. D. 1878.

[SEAL.] SAM'L ENNIS,
Clerk County Court.

24, 25 UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

I, M. M. Price, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify that the foregoing is a true transcript of the record and proceedings had in cases No. 838 & 1088 of The United States ex rel. George W. Harshman, relator, ag'st The County Court of Knox County and the Justices thereof, respondents, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court at office in the city of St. Louis, in said district, this 11th day of April, in the year of our Lord eighteen hundred and seventy-eight.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By T. L. CRAWFORD,
Deputy.

(Indorsement on cover:) No. 439. The County Court of Knox County and the Justices thereof, plaintiffs in error, vs. The United States ex rel George W. Harshman. E. Missouri C. C. U. S. Filed 2nd July, 1878.

109-229

OFFICE SUPREME COURT U.S.
FILED
DEC 20 1880
JAMES H. McKENNEY, Clerk.

109-229

IN THE

Supreme Court of the United States.

[No. ~~166.~~ 4]

October Term, 1880.

THE COUNTY COURT OF KNOX COUNTY *and the Justices thereof, Plaintiffs in Error,*

vs.

THE UNITED STATES *ex rel.* GEO. W. HARSHMAN.

Error to the Circuit Court of the United States for the Eastern District of Missouri.

STATEMENT, ASSIGNMENT OF ERRORS AND BRIEF FOR PLAINTIFF IN ERROR.

JAMES CARR and
GEO. D. REYNOLDS,
Attorneys for Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

[No. 166.]

October Term, 1880.

THE COUNTY COURT OF KNOX COUNTY *and the Justices thereof, Plaintiffs in Error,*

vs.

THE UNITED STATES *ex rel.* GEO. W. HARSHMAN.

Error to the Circuit Court of the United States for the Eastern District of Missouri.

STATEMENT OF CASE.

It is in substance alleged in the information, filed by the relator in this cause, that he recovered two judgments against Knox County, Missouri, one on the 31st of March, 1877, for $3,258.15, and the other on the 18th of October, 1877, for $6,764.44, on coupons for interest on bonds issued by said county to the Missouri and Mississippi Railroad Company, under and by authority of an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the Missouri and Mississippi Railroad Company,"

IN THE

SUPREME COURT OF THE UNITED STATES.

[No. 166.]

October Term, 1880.

THE COUNTY COURT OF KNOX COUNTY *and the Justices thereof, Plaintiffs in Error,*

vs.

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approved February 20th, 1865. That by the 13th section of said act, the County court of said county is authorized to levy a tax to pay the said bonds, not exceeding one twentieth of one per cent. upon the assessed value of taxable property in said county, in each year. That by the general law of the State, said County court is authorized to levy annually, *for county purposes*, a tax of one half of one per cent. upon the assessed value of the taxable property in said county. That the annual interest on said bonds amounts to about $15,000, and the proceeds of said special tax amount to not more than $1,750, and said special tax is wholly inadequate to pay the said interest. That said special tax has been levied every year since the issue of said bonds. That a demand has been made on the County court of said county, for warrants to be issued to relator for the respective amounts of said judgments, interest and costs, *payable out of the ordinary revenues of the county;* but said County court has refused to issue said warrants. Whereupon he prayed for a mandamus commanding said County court to issue warrants for the respective amounts of said judgments, interest and costs, *payable out of the ordinary revenues of said county*. (p. 2 of transcript).

A writ was issued accordingly on the 13th day of February, returnable on the third Monday in March following. This writ was duly served, and return made by the County court of Knox County, as required. In this return it admitted the facts alleged in said information.

It was then stated in said return that said bonds were issued by virtue of the power vested in said county of Knox by said act, and the only power which authorized their issue was contained in the 13th section of said act, which expressly restricts the County court of said county to levying a tax not exceeding one-twentieth of one per cent. for each year, to pay said bonds or the interest thereon; and that each and every bond so issued recited on the face thereof the fact, that they were issued by virtue of the authority vested in the County court of said county by the charter of

said company, *i. e.*, which was said act of February 20th, 1865, which recital gave notice to the relator of the restriction contained in the 13th section of said act. That there is no authority under the laws of the State of Missouri for the County court of Knox County to provide any revenue fund for the payment of said bonds or interest, except the one-twentieth of one per cent. authorized to be levied each year by said charter. That said one-twentieth of one per cent. has been levied every year as authorized by said charter. That the relator is not entitled to have his judgments paid out of any other revenue fund than that to be derived by said levy of one-twentieth of one per cent. pursuant to said charter. That the County court of Knox County has no power to issue warrants to relator for his judgments, *payable out of the ordinary revenues of said county*. That the County court of Knox County is not authorized to order warrants for said judgments payable out of any other fund than that derived from the tax of one-twentieth of one per cent. provided by said charter.

On the 18th day of March, 1878, the relator moved to quash said return for the following reasons, viz:

1st. That said return shows no legal cause why the relator should not have his peremptory writ as prayed.

2d. That the provision made by the 13th section of the charter of the Missouri and Mississippi Railroad Company for the payment of bonds issued by said county in aid of said company is not the sole or exclusive provision made for that purpose by the laws of the State of Missouri.

3d. That when the funds derived from the levy of the tax authorized by said 13th section are exhausted, the *holder of the bonds is entitled to be paid out of the general revenues of the county*.

4th. That the relator is not limited for the payment of his bonds and the judgments thereon to a *pro rata* share of the funds, derived from the levy of said one-twentieth of one per cent. tax.

5th. That it is immaterial whether the bonds, on which

were obtained the judgments set out in the alternative writ, were negotiable or not. (p. 9, of transcript).

On the 21st of March, 1878, said motion was sustained, and a peremptory writ of mandamus ordered to be issued, commanding the County court of Knox county, to forthwith cause warrants to be drawn in favor of the relator for the respective amounts of said judgments, interest and costs, *payable out of the ordinary revenues of the county for county purposes.* (p. 9, of transcript). To this action and ruling of the court, the County court of Knox county at the time excepted. A bill of exceptions was signed and filed. (p. 10, of transcript).

This case is brought to this court by writ of error.

ASSIGNMENT OF ERRORS.

On the record in this case the County court of Knox county, assigns the following errors:

1. The court below erred in sustaining the relator's motion to quash the return of the County court of Knox county to the alternative writ of mandamus, issued herein, and in quashing said return.

2. The court below erred in rendering judgment, that a peremptory writ of mandamus be issued against the County court of Knox county and the justices thereof, commanding them, and each of them, that they forthwith cause warrants to be drawn in favor of the relator for the respective amounts of the judgments, interest and costs, set forth in said alternative writ of mandamus, on the treasurer of Knox county, *payable out of the ordinary revenues of the county for county purposes.*

BRIEF.

The question presented by the record in this case is, whether the relator is entitled to have a warrant drawn in his favor for the amounts of his judgments, interest and costs, on the treasurer of Knox County, Missouri, *payable*

out of the ordinary revenues of the county for county purposes.

I. The relator relies upon the case of the United States v. County of Clark, 96 U. S. 211, to sustain the judgment of the court below. That judgment was rendered simply in obedience to what the court below understood to be the judgment of this court in the case referred to, and not on its own judgment; for its own judgment was reversed by this court in that case. That case never was argued orally. It was submitted by both sides on briefs prepared by Iowa lawyers, who were not familiar with the statutes of the State of Missouri applicable to the question involved, and the attention of this court was not called to said statutes nor the construction put upon them by the courts of Missouri.

The question presented did not belong to the domain of general jurisprudence. The case depended on local statutes, and decisions of the State courts construing these statutes. These statutes will be cited and decisions referred to hereafter.

The difficulty which grows out of the case of the United States v. County of Clark, is, that it is urged as authority to issue a mandamus against the county court of Knox County commanding it to issue a warrant to the relator, for the amount of his judgments, *payable out of the ordinary revenues of the county*, levied, assessed and collected for the express purpose of defraying the current expenses of the county, and for no other purpose; and the decision was so construed by the court below, as will be seen by reference to the judgment rendered in the case. If this is the proper construction of the decision, then, we most respectfully join issue upon this construction, and say that it was made without a full understanding of the statutes and policy of the State of Missouri, in regard to the system of drawing warrants upon the county revenue, which has prevailed ever since the organization of the State Government; for the system was the same when the bonds in question were

issued, as it was when the State of Missouri was admitted into the Union, fifty years ago; and without this court being aware of the disastrous consequences which would result to the county governments of the State, from drawing a warrant on the ordinary revenues of the county, in the form required by the judgment in this case for an extraordinary debt.

Now, there is a diversity of opinion among the profession as to what this court meant by the following words in the opinion delivered on behalf of the majority of the court in the case of United States v. County of Clark, *supra*, viz: "The relator is entitled to payment of his judgment out of the *general funds* of the county, so far as the special tax of one-twentieth of one per cent. is insufficient to pay it."

Some construe these words as holding that such judgment creditor is entitled to have a warrant for the amount of his judgment drawn on the common or general revenue funds of the county, the same as a county officer for services rendered by him in administering the county government, and to be paid by the county treasurer in the order of the presentation of such warrant out of said funds; whilst others construe those words as holding that what is meant by those words is, that such judgment creditor is entitled to the *surplus* only which is left in the county treasury out of the common or ordinary revenue funds of the county, after defraying the expenses thereof necessarily incurred in administering the county government. That after these expenses are all paid, the express purpose for which such funds were levied, assessed and collected, has been complied with, and they cease to be funds impressed with this trust for purely governmental purposes, and consequently fall into the reservoir of *general funds*, and become subject to the payment of any extraordinary indebtedness incurred by the county, such as the debt in controversy.

The legal effect of drawing a warrant on the ordinary revenues of the county is, that "all warrants so presented

shall be paid out of the funds mentioned in such warrant, and in the order in which they shall be presented for payment. § 8, p. 411 Wag. Stats.

The treasurer is subjected to heavy penalties if he refuses to register or pay a warrant when drawn upon him. § 18, p. 414 Wag. Stats.

Now, if the former is the true construction of the decision in the case of the United States v County of Clark, then, we say that that construction is erroneous, for the reason that if it shall be followed, its effect will be to divert the common or ordinary revenues of the county from the payment of the current expenses incurred in administering the county government to the payment of an extraordinary indebtedness; and that the current expenses would have to remain unpaid, until this and other extraordinary debts of the same kind (and there were $50,000 of them, besides the relator's, when the relator filed his information, p. 3, of transcript), should all have been paid.

"The government was a privileged creditor under the Roman law, and entitled to *priority* in the payment of debts. The *cessio bonorum* was made subject to this priority. This is generally the case in all modern bankrupt and insolvent laws. In England, the King's claim is preferred to that of a subject, provided, the King's process was commenced before the subject had obtained judgment."

1 Kent's Com., 10th ed., 269.

A county is a political subdivision of the State, and the County court of a county "is a part of the State government, with specific powers, duties and functions, generally local to the county, it is true, but derived from the State, and not from the county."

Reardon v. St. Louis County, 36 Mo. 561.

St. Louis Police Commissioners v. St. Louis County Court, 34 *Id.* 546.

Steines v. Franklin County, 48 *Id.* 188.

Ray County v. Bentley & Barr, 49 *Id.* 236.

This principle is sustained by the following authorities:

Grant v. City of Davenport, 36 Iowa, 401.
Coffin v. Same, 26 *Id.* 515.
Iowa R. R. Land Co. v. County of Sac, 39 *Id.* 134.
French v. Burlington, 42 *Id.* 618.
Von Hoffman v. City of Quincy, 4 Wall. 549.
Com. v. Commrs. of Lancaster County, 6 Binney, 5.
Same v. Commrs. of Philadelphia County, 1 Wharton, 1.
Same v. Same, 2 *Id.* 286.
High on Ex. Legal Remedies, § 352.

II. Let us examine the statutes of the State which are applicable to the expenses of counties, and ascertain whether the relator's debt is of the kind which entitles him to a warrant on the ordinary revenues thereof.

The 165th section of Wagner's Missouri Statutes (p. 1193), has the following provision: "The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties, by a tax upon all property, and licenses made taxable by law for State purposes * * *, but the county tax shall in no case exceed one-half of one per cent. on all taxable property."

The relator's debt against Knox county is not embraced in the terms, "expenses of the county." This is manifest from the next section (§ 166), which makes it the duty of the county court, after the assessor's book shall have been returned, corrected and adjusted, to "ascertain the sum necessary to be raised for county purposes, and fix the rates of taxes on the several subjects of taxation, so as to raise the required sum." If it had been intended to embrace an indebtedness incurred by a county in subscribing to the capital stock of a railroad company, and issuing bonds in payment thereof, the General Assembly would have expressed such intention in plain and unequivocal language, as it did in section 1, p. 1158, *Ibid*, in providing for the levy of

State taxes. From the organization of the State government, down to the present time, the terms, "expenses of the county" have been used in every revision of the statutes of the State of Missouri, and have always been understood and construed as embracing "the ordinary current expenses incurred in conducting the *county government*, such as the payment of grand and petit jurors, witnesses summoned before the grand jury, costs of criminal prosecutions, expenses in supporting the poor and insane of the county, salaries of officers, assessing and collecting the revenue, etc."

State v. Macon County Court, 68 Mo., p. 42.

The original act from which the 165th section of Wagner's Missouri Statutes, *supra*, is copied, is as follows:

"Sec. 20. That the county courts shall be, and they are hereby empowered to levy and cause to be collected, in their respective counties, such tax as shall from time to time be necessary for defraying county expenses, on all property made taxable by law for State purposes." Rev. Statutes 1825, p. 671.

The same section is carried into the revision of 1835 (§ 1, p. 540); and in the revision of 1845 (§ 1, p. 945); and also in the revision of 1855 (§ 1, p. 1349); and also in the revision of 1865, (§ 76, p. 121 Gen. Stats.) There was no such thing as a railroad in the State of Missouri, or authority to subscribe to the capital stock of a railroad company, until a short time prior to the revision of the statutes in 1855, when there was plenary power conferred on the county courts of their respective counties to subscribe to the capital stock of railroad companies, and to issue bonds in payment of such subscription, and to "levy a special tax * * * to pay such installments, to be kept apart from other funds, and *appropriated to no other purpose* than the payment of such subscription." §§ 31 to 35, p. 427 Rev. Stats., 1855.

Here is plenary power for levying, assessing and collecting "a special tax" to pay "the installments" or "bonds" issued in pursuance of this act. The "special tax" thus

authorized, when collected, would constitute, in the language of the form for a county warrant (§ 31, p. 415 Wagner's Stats.) a "particular fund" in contra-distinction to a warrant "for county expenditures;" and the county court would have no more authority to draw a warrant upon this particular fund for county expenditures than it would have to draw a warrant upon the ordinary revenues of the county for the payment of bonds issued in pursuance of the special statute authorizing the issue of such bonds.

State v. Macon County Court, 68 Mo. 29.

"Each county court shall have power to audit, adjust and settle all *accounts* to which the county shall be a party: to order the payment out of the county treasury of any sum of money found due by the county." § 28, p. 414 Wag. Stats.

"Sec. 31. When the court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor, in the following form:

Treasurer of the the County———pay to—— ——dollars, out of any money in the Treasury appropriated for County expenditures [or express the *particular* fund, as the case may require.] Given at the court house, this————day of————18——. By order of the county court.

Test, C. D., Clerk.

A. B., President.

The duty of the Treasurer, when a warrant is drawn upon him, and the effect thereof are defined by the following sections which were in force when the bonds in controversy were issued, viz:

§ 8. He shall procure and keep a well-bound book, in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money by the county court of the county of which he is the treasurer, stating correctly the date, amount, number, in whose favor drawn, and the date the same was presented;

and all warrants so presented *shall be paid out of the funds mentioned in such warrant, and in the order in which they shall be presented for payment.*

§ 9. No county treasurer shall refuse the payment of any warrant legally drawn upon him and presented for payment, for the reason that warrants of prior presentation have not been paid, when there shall be money in the treasury belonging to the fund drawn upon, sufficient to pay such prior warrants, and any such warrant so presented; but such treasurer shall, as he shall receive the money into the treasury belonging to *the fund* so drawn upon, set the same apart for the payment of warrants previously presented, and *in the order presented*, so that no warrant of subsequent presentation shall remain unpaid, by reason of the holder of the same failing to present such warrants for payment after funds shall have accrued in the treasury for the payment of the same."

Now, the effect of the warrant drawn in this case; in obedience to the mandate of the court below, is to put the relator in the category of a *preferred* creditor, *i. e.*, in the same category with a creditor whose debt was created in rendering services for the county in its governmental capacity. Such effect is not only in contravention of the statutes of the State, but also of the decisions of its Supreme Court.

State v. Macon County Court, *supra*.
State v, Shortridge, 56 *Id.* 126.
Pettis County v. Kingsberry, 17 *Id.* 479.
Kingsberry, *et. al.* v. Pettis County, 48 *Id.* 248.
Campbell v. Polk County, 49 *Id.* 214.
Hitchcock v. City of St. Louis, 49 *Id.* 484.

There is not money enough in the treasury to pay the current expenses of the county, and the relator's, and other extraordinary debts of the county. What, then, is the inevitable effect of drawing a warrant in favor of the relator on the ordinary revenues of the county, as commanded by the judgment in this case? Manifestly, to suspend the

county government in its legitimate duties and functions. Will this court render a decision that will produce such anarchical effect as this?

Under the laws of the State of Missouri it is expressly made a *criminal* offense for "any member of any county * * * to knowingly vote for the appropriation, disposition or disbursement of any money or property belonging to any * * * county * * other than the *specific use* for which the same was devised, appropriated and collected." (Session Acts, 1874, § 1, p. 45.)

There is no allegation in the information that there is any fund in the county treasury applicable to the payment of the relator's judgments so as to make it the duty of the County court of Knox County to draw a warrant in his favor on said fund.

It is not alleged that the relator, under his contract with the county, is entitled to have a warrant drawn on "the ordinary revenues of the county for county purposes," so as to make it the duty of the County court to order a warrant to be so drawn.

The law never compels a court to do a fruitless act.

High on Ex. Legal Remedies, § 352.

III. No authority exists to compel, by *mandamus*, the issue of *warrants* in satisfaction of a judgment.

Under the previous points we have seen the nature and effect of warrants under the laws of Missouri. They are ordered issued by the County courts, for the payment of *accounts* audited by the County courts; are drawn upon a particular fund, and are simple contract obligations. (See State v. Clay County, 46 Mo. 231.) The debt in this case was originally evidenced by a sealed instrument, a bond; having put it into a higher form of obligation, namely a judgment, relator now asks the court to destroy the judgment while professing to enforce it, by issuing a simple certificate of obligation not under seal. The exercise of judi-

cial discretion on the part of the county judges is involved in drawing warrants.

State v. Macon County Court, 68 Mo. 48.

The warrant is the form the judgment of the County court takes. When in that court a claimant establishes his demand, no formal judgment or execution issues in his favor; it takes the form of an order for a warrant.

See § ~~28~~ 31, p. 414 Wag. Stats., cited *supra*.

Appeal lies from the action of the County court in refusing a warrant.

1 Wag. Stats., p. 415, § 36.

State v. Macon Co. *supra*, and cases cited.

But if the claimant resorts to a court of record to establish his claim by suit, he does so under this law:

"All actions, local or transitory, against any county, may be commenced and prosecuted to final *judgment and execution* in the Circuit court of the county in which suit is brought."

1 Wag. Stats., p. 408. § 4.

This very judgment was obtained under this law. The relator, however, avoids the necessity of averring that he had sued out execution and exhausted that remedy by averring, as he had a right to do, facts which show an execution would be unavailable.

He now prays for the assistance of a writ of *mandamus*. Said this court in Riggs v. Johnson County, 6 Wall. 166, p. 198, *mandamus* "is a proceeding ancillary to the judgment which gives jurisdiction, and when issued, becomes a substitute for the ordinary process of execution to enforce the payment of the same as provided in the contract."

It is the process used to reach assets not appropriable under an ordinary execution.

Commrs. of Knox Co. v. Aspinwall, 24 How. 376.
U. S. v. Com. of Keokuk, 6 Wall. 520.

Supervisors v. Durant, 9 Wall. 417.

Heine v. Levee Commissioners, 19 Wall. 655.

In all these cases, and in every case where this court has had before it the question of its right to issue the writ, in aid of a judgment, that writ has been used, not to command the issue of a *warrant*, but to compel *the levy of taxes*, and no case can be found where, on the point being made, this court has used the writ to order the issue of a warrant. True in U. S. v. County of Clark, *supra*, this court did order warrants, but in that case the point was not made that *mandamus* did not lie to compel the issue of warrants. It is, therefore, no authority on this point.* We, therefore, maintain that relator is not entitled, in aid of or enforcement of this judgment, to the writ prayed for and awarded, namely a *mandamus for a warrant*.

The analogies of the statutes of Missouri support this position.

Thus, under the execution law of that State, a law as old as the State, it is enacted that:

"§ 77. Whenever an execution issued out of any court of record in this State, against any incorporated town or city, shall be returned unsatisfied in whole or in part, for want of property whereon to levy, said court * * * may by writ of *mandamus* order and compel the chief officer, trustees, council and all other proper officers of such town or city to *levy, assess and collect a special tax* to pay such execution and all costs."

"§ 78. The court shall determine the time within which the levy and collection of such tax shall be made, and shall make all necessary orders to secure the prompt and speedy payment of such debt."

1 Wag. Stat., p. 617.

Yet the law regulating the settlement of claims against towns and cities is identical with that relating to counties. Thus, "in all cases where any city or town in the State shall be indebted to any person, on any account whatever, a *warrant* shall be drawn on the treasurer or other officer

* It is only authority for the position that for any balance due after proceeds of the tax of one-twentieth of one per cent. have been applied, the holder may look to the county for payment, like any other creditor. U. S. v. Macon Co., 99 U. S. 582. That position, we, in this case, concede. We deny that it is authority for any other position.

* * * for the whole amount found due to such person, by the tribunal or officer having the power to audit and allow claims * * and to draw warrants therefor." The treasurer is required to register warrants; to pay them in order of presentation; and in short, the law is identical with that regulating county warrants

See 2 Wag. Stat., pp. 1324-5, §§ 1 to 12.

Under the general railroad law (see 1 Wag. Stat., p. 305, § 18), it is provided that the county courts *shall levy taxes upon all property taxable by law*, to raise money to pay bonded debts, which money shall be kept apart from other funds, and appropriated to no other purpose, and by section 22 of the same chapter, it is provided that this duty may be enforced by *mandamus*. (See p. 306, 1 Wag. Stat.). These provisions have been part of our laws ever since 1855. (See Rev. Stat., 1855, p. 427, § 31, and p. 429, § 35.)

In short, we contend that it was never intended by our laws to issue *warrants* for bonded indebtedness. The *reason* of the thing, as well as the analogies of the law, are all against such a proceeding. The bond liquidates and ascertains the debt; so does the warrant.

Here are bonded debts now rapidly maturing, and becoming, many of them, merged in judgments. They amount to hundreds of thousands of dollars; in this county on this series of bonds to over one hundred and eighty-five thousand dollars and interest.

Suppose these bonds go into the hands of one man, and he puts them into judgment. This court orders a warrant for it. Now what is the effect? A tax is levied to pay it—each year for a certain per cent. (see U. S. v. Macon Co., 99 U. S. 582), and each year a sum is realized and comes into the hands of the treasurer. The treasurer does not pay it out on the warrant, in part payment, *for the partial payment* of warrants is not permitted by our law; as the treasurer pays a warrant he takes it up, and cancels it, and the cancelled warrant is the only voucher upon which he can by law

obtain a settlement of his accounts with the County court. In the meantime the warrant is drawing interest.

On the other hand, where the court by *mandamus* orders the assessment, levy and collection of a tax, the matter is very simple. The court regulates the amount of tax each year, where no limitation is fixed by law, with a view to the amount to be raised, the per cent. required for the ordinary governmental expenses of the county, and for other prior claims—in short the court enforces its judgments with due regard to the interests of all, debtor and creditor, citizen and State, and will not suffer any creditor to abuse the extraordinary process of the court by turning it into an engine of wrong and oppression, alike onerous to the citizen and destructive of government.

If we are correct in our view that relator's judgments are not the kind of expenses which is contemplated by the terms "expenses of their respective counties," as said terms have been used, understood and construed since the organization of the State government, it follows, then,

1st. That he is not entitled to have a warrant drawn on the treasurer of Knox County "payable out of the *ordinary revenue* of the county for county purposes."

2d. That the county court cannot be compelled by *mandamus* issued out of another court, to draw a warrant in payment of a judgment based upon bonds.

For the foregoing reasons it is respectfully submitted that the judgment of the court below is erroneous, and ought to be reversed and the proceeding dismissed.

JAMES CARR and
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Attorneys for Plaintiff in Error.

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SUPREME COURT OF THE U.S.
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—IN THE—

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1880.

THE COUNTY COURT OF KNOX COUNTY, AND THE JUSTICES THEREOF, *Plaintiffs in Error,* *vs.* THE UNITED STATES, *ex rel.* GEORGE W. HARSHMAN, *Defendant in Error.*	No. ~~166.~~ 4 *Error to the Circuit Court for the Eastern District of Missouri.*

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

T. K. SKINKER,
Counsel for Defendant in Error.

Pierce Bros., Law Printers, 217 North Third Street.

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SUPREME COURT OF THE UNITED STATES,

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THE COUNTY COURT OF KNOX COUNTY, AND THE JUSTICES THEREOF, *Plaintiffs in Error,* *vs.* THE UNITED STATES, *ex rel.* GEORGE W. HARSHMAN, *Defendant in Error.*	No. 166. *Error to the Circuit Court for the Eastern District of Missouri.*

STATEMENT.

This is a proceeding by mandamus against the justices of the County Court of Knox County, Missouri, to compel them to cause warrants to be drawn in favor of relator on the County Treasurer, payable out of the general revenues of the county. The alternative writ, omitting some preliminary statements, recites "that on the thirty-first day of March, 1877, relator recovered in this court a judgment against said county for the sum of thirty-two hundred and fifty-eight $\frac{15}{100}$ dollars and costs; that on the eighteenth day of October, 1877, he recovered in this court another judgment against said county for the sum of sixty seven hundred and sixty-four $\frac{1}{100}$ dollars and costs; that both of said judgments bear interest from the day of the rendition at six per cent. per annum, and are founded on coupons for the interest on bonds issued by said county to the Missouri and Mississippi Railroad Company: that the bonds from which said cou-

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pons are taken are part of a large number of bonds so issued by said county to aid in the construction of the railroad of said company; that by the thirteenth section of the charter of said company, being entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20, 1865, the County Court of said county is authorized to levy a tax to pay said bonds not exceeding one-twentieth of one per cent. upon the assessed value of the taxable property in said county in each year; that by the general law of the state the said County Court is authorized to levy annually for county purposes a tax of one-half of one per cent. upon the assessed value of the taxable property in said county; that the annual interest on the bonds issued in aid of said railroad amounts to about fifteen thousand dollars, and the proceeds of the annual tax authorized by said charter amounts to not more than seventeen hundred dollars, and is wholly inadequate to pay the said interest, and that a very large amount of said interest is now in arrears, besides the said judgments, to-wit, the sum of fifty thousand dollars; that there is in the treasury of said county a fund of not more than six hundred dollars, derived from the levy of said tax of one-twentieth of one per cent., and that warrants have already been drawn upon said fund, and have been presented for payment to the treasurer of said county to the amount of twenty-three hundred dollars, but have not been paid, because there was no money in said fund except as aforesaid; that said tax of one-twentieth of one per cent. has been levied for the year 1877, and for every year prior thereto since the issue of said bonds; that the said tax for the current year, (1878) if collected in full, will not pay more than the warrants already drawn and presented to the treasurer; that the said county has no property which can be subjected by execution to the satisfaction of said judgments; that it is by law the duty of said County Court

to audit, adjust and settle all accounts to which the said county is a party, and to order the payment out of the county treasury of any sum of money due by the said county, by a warrant to be issued by the clerk of said court; that a demand has been made on said court for warrants to be issued to the relator for the respective amounts of said judgments, with interest and costs on each, payable out of the ordinary revenues of the county; that said court has refused to issue such warrants, and that relator is without other legal remedy."

The writ then commands the justices to show cause why they should not cause the warrants to be drawn as prayed.

To this there was a return filed by the justices, denying the relator's right to have the warrants prayed for, and assigning the following as reasons:

"That the bonds of said relator, from which the coupons on which he obtained judgments were by said relator detached, are of the issue of one hundred and eighty-five thousand dollars in bonds heretofore issued by said Knox County to the Missouri and Mississippi Railroad Company; that said bonds were issued by virtue of the power vested in said County of Knox, by the act entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved by the General Assembly of the State of Missouri, February 20, 1865, and the only power which authorized their issue was contained in the thirteenth section of said act, which expressly restricts the County Court of said County of Knox from levying a tax exceeding one-twentieth of one per cent. for each year to pay said bonds, or the interest thereon, and that each and every bond so issued, recited on the face thereof the fact that they were issued by virtue of the authority vested in the County Court of said county by the charter of said company, being entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20, 1865,

which recital gave notice to the relator of the restriction contained in the thirteenth section of said act.

That said bonds, or any of said coupons, did not expressly state that they were issued for value received; and, therefore, under the laws of the State of Missouri they were not negotiable.

That it is true generally that it is the duty of the County Court to audit and settle the accounts against the said county, and cause a warrant to be issued in payment thereof, drawn on the general revenue fund, but further say that they would not be authorized by law to issue a warrant on the general revenue fund in payment of any of said bonds.

That there is no authority under the laws of the State of Missouri for the County Court of said county to provide any revenue fund for the payment of said bonds or interest, or any payment thereon, except the one-twentieth of one per cent. authorized to be levied each year by the said charter.

That as the County Court of Knox County they have levied all the tax they are authorized to levy by the section aforesaid of the charter of said railroad company.

That the relator is not entitled to have his judgments paid out of any other revenue fund than that to be derived by levy and collection of tax, pursuant to said charter; and of the fund so collected, under the power contained in said charter from year to year, the same is to be distributed proportionately among the holders of said bonds of said issue of one hundred and eighty-five thousand dollars.

That the County Court of said Knox County has no power to issue warrants to relator for his judgments, payable out of the ordinary revenues of said county.

That there is no fund in the treasury applicable to

said bonds except such as will more than be consumed by the warrants already registered.

That they are not authorized to order warrants for said judgments payable out of any other fund than that derived from the tax of one-twentieth of one per cent, as provided by said charter; and such warrants, if at all authorized, could only be for said relator's proportion of each year's levy of the said one-twentieth of one per cent. authorized by the charter. Wherefore, these respondents ask to be discharged with costs."

The relator filed a motion to quash this return, assigning the following reasons:

1. That said return shows no legal cause why the relator should not have his peremptory writ as prayed.

2. That the provision made by the thirteenth section of the charter of the Missouri and Mississippi Railroad Company for the payment of the bonds issued by said county in aid of said company, is not the sole or exclusive provision made for that purpose by the laws of the State of Missouri.

3. That when the fund derived from the levy of the tax authorized by said thirteenth section is exhausted, the holder of bonds is entitled to be paid out of the general revenues of the county.

4. That the relator is not limited for the payment of his bonds and the judgments thereon to a *pro rata* share of the fund derived from the levy of one-twentieth of one per cent. tax.

5. That it is immaterial whether the bonds on which were obtained the judgments set out in the alternative writ were negotiable or not.

This motion was sustained and a peremptory writ ordered. The justices then sued out this writ of error.

BRIEF.

From the foregoing abridgement, it will be seen that the return admits, either expressly or tacitly, all the recitals of the alternative writ. The material question presented is this: Is the holder of bonds issued under the act of the Missouri Legislature of February 20, 1865, incorporating the Missouri and Mississippi Railroad Company, limited for their payment to the fund raised by the levy of a tax of one-twentieth of one per cent., as provided by Section 13 of that act? Or can he, after that fund has been exhausted, look to the general revenues of the county for payment? This question has been definitely decided by this court in favor of the right to look to the general revenues of the county, in two cases:

United States v. Clark Co., 96 U. S., 211;
Macon Co. v. Huidekoper, 99 U. S., 592.

The decision of this question carries with it the further question presented by the record, whether, in view of the inadequacy of the fund, relator is entitled to be paid in full, or only a proportionate share. This was also decided in his favor in the above cases.

This judgment should therefore be affirmed.

Respectfully submitted,

T. K. SKINKER,

Counsel for Defendant in Error.